

John Doe #5

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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **TACOMA DIVISION**

11 JOHN DOE #1, an individual, JOHN DOE #2,
12 an individual, and PROTECT MARRIAGE
WASHINGTON,

13 Plaintiffs,

14 vs.

15 SAM REED, in his official capacity as
16 Secretary of State of Washington, BRENDA
GALARZA, in her official capacity as Public
Records Officer for the Secretary of State of
Washington,

17 Defendants.
18

No. 3:09-CV-05456-BHS

19 **DECLARATION OF**
20 **[REDACTED]**
21 **IN SUPPORT OF MOTION FOR**
22 **PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:
September 3, 2009

The Honorable Benjamin H. Settle

23 I, [REDACTED] make the following declaration pursuant to 28 U.S.C. § 1746:

24 1. I am a resident of the state of Washington over 18 years of age, and my statements herein
25 are based on personal knowledge.

26 2. My husband and I are pastors at [REDACTED] Church in Olympia,
27 Washington.

28 3. Both my husband and I have been active in the petition campaign involving Referendum

71. I am a supporter of marriage, as defined between one man and one woman.

4. My husband and I are listed on the Protect Marriage Washington website as endorsers of
the petition.

Declaration of
[REDACTED]
(No. 3:09-CV-05456-BHS)

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1 South Sixth Street
Terre Haute, Indiana 47807-3510
(812) 232-2434

John Doe #5

1 5. I acted as a signature gatherer during the signature gathering period. I gathered signatures
2 at various locations, including outside public stores such as Wal-Mart, Target, and Fred Meyer.

3 6. During the petition signing period, I traveled and drove to many areas of Washington,
4 talking to other pastors about Referendum 71 and the Referendum 71 petition drive.

5 7. At a Fred Meyer store, the manager of the store said that we had five minutes to leave
6 before she would call the police because we were gathering signatures in front of the store.

7 8. At a Wal-Mart store, my husband and I were collecting signatures at a table. As I finished
8 helping a female sign the petition, I turned and saw a young woman pointing her cell phone at
9 me. She also told me that she had been making a videotape of me. I believe that she had been
10 doing this for several minutes.

11 9. Before I could say anything to the young woman, she said, "I just took your picture and
12 have been videotaping you. I'm going to put this on my MySpace page and Facebook for all my
13 transgender and lesbian friends to see what you are doing." She then closed her phone and
14 walked away.

15 10. I am not comfortable knowing that someone took my picture without my permission to
16 put on her MySpace and Facebook pages. I took this comment as a threat.

17 11. I have been participating in the petition signature verification process as an observer. As
18 an observer, I am required to "sign in" with the Secretary of State whenever I observe the
19 process.

20 12. On July 30, 2009, the day after becoming the lead observers during the signature
21 verification process for Referendum 71, where we must sign in daily, we began to receive calls
22 from someone who was identified as "David Baurle" on our caller identification.

23 13. Because my husband and I were at the elections office as lead observers for Referendum
24 71, I was not able to David's phone call until that Saturday, August 1, 2009. When I returned the
25 call and asked for David, the person who answered told me that I had reached "Krystal
26 Mountaine." I told the person that I had received two messages from a "David" at this number.
27 The person told me that no one named David lived at the number I had dialed. He then asked
28 who I was, and I identified myself as Pastor [REDACTED]

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John Doe #5

1 Church, and David/Krystal stated that she/he had made the phone calls to our church where the
2 caller had identified as "David." David/Krystal then told me that David had been his name, but
3 that he/she had legally changed it to Krystal. Later in our conversation, David/Krystal told me
4 that he/she was a hermaphrodite. Because the caller i.d. had referred to the caller as David
5 Baurle, I do not know which is the correct name to refer to him/her as. To minimize confusion, I
6 will refer to this individual as "David," as this was the first name I associated with the individual.

7 14. I asked David where he had found our names, and he stated that he had found us on the
8 internet. He then said, "You're listed on [REDACTED]'s website as one of his sponsors, aren't
9 you?" I told him yes, and I inquired as to how he had found our phone number. He then stated,
10 "You're on the internet, aren't you?" Although I pressed him to be more specific, he refused to
11 tell me anything more.

12 15. David asked me why I was involved in the Referendum, and why I was against people
13 like him having their rights.

14 16. I told David that our website had a video explaining our position, and that if he had
15 found us on the internet, he could watch a video we have on the church website by Pastor [REDACTED]
16 my husband, titled, "[REDACTED]" and that should answer all
17 his questions. David said, "I've already watched it."

18 17. David told me that he/she had many transgender friends who would come to our church.
19 I told David he was welcome to come to our church and *after* our services were over, my
20 husband and I would have no problem sitting down and discussing with him any questions he
21 might have, but we would not want any disturbances or disruptions during worship.

22 18. After I answered one of David's questions about my opinion regarding homosexuality
23 and his being a transgender, David started a verbal tirade of calling me "stupid" and other names.
24 Once that started, I interrupted David and said that if he wanted my opinion, I would only give it
25 if he was going to be civil; otherwise, if he was going to continue this verbal assault, we had
26 nothing further to discuss. David then ended the conversation and hung up.

27 19. Immediately after hanging up, David called our church phone three more times.

28 20. David left message each of the times he called. The messages were threatening in

John Doe #5

1 nature. For instance, David stated that he would be bringing his transgender friends to our
2 services the next day. Sarcastically, David stated that we didn't have to "worry" that there would
3 be a disturbance, but by his tone and comments, his intentions were clear. In these voice
4 messages, David initially referred to me as "lady," then changed and started to refer to me as
5 "sir" or "that gentleman I was talking to." I believe which meant either he and his friends would
6 threaten those who attend our services and prevent them from donating. David also stated that
7 we would not be getting much from our offering plate on Sunday. He also said, "when me and
8 ALL my gay and transgender friends come to your church tomorrow, I hope you have *enough*
9 *room* for all of us, when the community finds out you and your church are not supporting the gay
10 community, they will not want to *give to your church*."

11 21. Our church is temporarily located in a [REDACTED] and we have a good relationship with the
12 [REDACTED] manager. We did not want this situation to become a problem not only just for us, and our
13 church, but for the [REDACTED] as well.

14 22. After receiving the calls, my husband and I called the [REDACTED] manager, who we have a
15 good relationship with, to apprise him of the potential problem at our church services the next
16 day. The calls above were made on a Saturday morning, and our church service was scheduled
17 the next day.

18 23. The manager was concerned about a possible disturbance, both for his [REDACTED] and
19 because of how such a disturbance would be viewed by his own managers. He also worried that
20 the "press" could show up at the [REDACTED] and potentially cause a loss of business, as well as disrupt
21 the [REDACTED] of the [REDACTED]. We assured the [REDACTED] manager that federal law prevented the sorts of
22 disturbances that David threatened.

23 24. My husband and I also called the police to let them know of the harassing phone calls
24 and threats to disrupt our church services. The officer who responded listened to the messages
25 that David had left on our answering machine. The officer then called David and told him not to
26 continue the harassment and threats, and that he was not welcome at our church.

27 25. Although David has not showed up to our services, nor continued his harassing phone
28 calls, I have since received an email from Krystal Mountaine. A true and correct copy of that

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John Doe #5

1 email is attached as Exhibit A to this declaration. Although the email states that David had no
2 intent to disturb our services, I believe he had just such an intent and only wrote this letter
3 because he had been contacted by the police.

4 26. I felt that someone other than David/Krystal drafted this email, because the style and
5 words did not sound at all like the David/Krystal we talked with on the phone, and who left three
6 messages. The email appeared to be written by someone other than David/Krystal, because it
7 was much more articulate than he had been in all of our previous interactions.

8 27. Our church has also received a phone call from someone who left a message of gibberish
9 that is only partially understandable. This call came the second week my husband and I were
10 overseeing the signature verification process as the [REDACTED] for Referendum 71 (August
11 13th). My husband and I act as [REDACTED] from 7:30 a.m. to 10:00 p.m., Monday through
12 Friday, at the Secretary of State's office in Olympia, Washington. Although I cannot be sure, I
13 believe that this message is related to our participation in the Referendum 71 campaign.

14 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
15 AND CORRECT.

16
17 Executed on: August [REDACTED] 2009.

18 [REDACTED]
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20 Signed: [REDACTED]
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CERTIFICATE OF SERVICE

I, Scott F. Bieniek, am over the age of 18 years and not a party to the above-captioned action. My business address is 1 South Sixth Street; Terre Haute, Indiana 47807-3510.

On September 1, 2009, I electronically filed the foregoing document described as Declaration of John Doe #5 in Support of Motion for Preliminary Injunction with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

James K. Pharris
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Counsel for Proposed Intervenor Washington Families Standing Together

And, pursuant to Fed. R. Civ. P. 5(b)(1) and 5(b)(2)(C), I served the foregoing document by placing a true and correct copy of the document in a sealed envelope with postage thereon fully prepaid, in the United States mail at Terre Haute, Indiana, addressed to the following non-CM/ECF participants:

Leslie R. Weatherhead
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Counsel for Proposed Intervenor Washington Families Standing Together

1 Arthur West
2 120 State Ave NE #1497
3 Olympia, WA 98501
4 *Proposed Intervenor*¹

5 I declare under the penalty of perjury under the laws of the State of Indiana that the above is
6 true and correct. Executed this 1st day of September, 2009.

7 /s/ Scott F. Bieniek
8 Scott F. Bieniek
9 *Counsel for All Plaintiffs*

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¹ A courtesy copy was provided via e-mail to Mr. West at awestaa@gmail.com.